

Oral Hearing:
June 19, 2002

**THIS DISPOSITION
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THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Motient Corporation¹

Serial Nos. 75/688,691, 75/693,982,
75/693,991 and 75/772,705

James T. Walsh and Carol Lally of Arnold & Porter for
Motient Corporation.

Paula B. Mays, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Walters, Chapman and Rogers, Administrative
Trademark Judges.

Opinion by Walters, Administrative Trademark Judge:

Motient Corporation has filed four applications to
register on the Principal Register the marks shown below
for the goods and services identified below.

¹ Motient Corporation is the applicant by assignment, recorded with the
USPTO, from the original applicant, ARDIS Company.



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The identification of goods and services in the applications for the two marks shown above is "telecommunications equipment, namely, a combination pager and email device," in International Class 9; "publications, namely pamphlets, booklets, printed instructional materials, printed instruction sheets, brochures, manuals, leaflets, flyers, books and newsletters regarding telecommunications and related

² Serial No. 75/688,691, filed April 22, 1999, based on an allegation of a bona fide intention to use the mark in commerce. The application includes a disclaimer of WIRELESS E-MAIL SERVICES apart from the mark as a whole.

³ Serial No. 75/772,705, filed August 11, 1999, based on an allegation of a bona fide intention to use the mark in commerce.

subjects," in International Class 16; and
"telecommunications services, namely, email and paging
services," in International Class 38.

In the two additional applications that are subjects
of this consolidated appeal, applicant seeks registration
of the marks ELINK MESSENGER⁴ and ELINK AGENT.⁵ The
identification of goods and services listed in these two
applications is identical to the listing of goods in
International Class 9 and services in International Class
38 in the other two applications, but does not include
the goods in International Class 16.

The Trademark Examining Attorney has issued a final
requirement, under Section 6 of the Trademark Act, 15
U.S.C. 1056, for a disclaimer of ELINK (or E-LINK) apart
from each mark as a whole on the ground that the ELINK
portion of each of applicant's marks is merely
descriptive in connection with the identified goods and
services.

Applicant has appealed. The Board granted
applicant's request to consider the appeals in these four
applications in a single consolidated appeal because the

⁴ Serial No. 75/693,991, filed April 30, 1999, based on an allegation of
a bona fide intention to use the mark in commerce.

⁵ Serial No. 75/693,982, filed April 30, 1999, based on an allegation of
a bona fide intention to use the mark in commerce.

issue on appeal is the same in each application. Both applicant and the Examining Attorney have filed briefs, and an oral hearing was held.

The Examining Attorney contends that the term "e-link" is an abbreviation of the term "electronic link"; that both "electronic link" and "e-link" are commonly used in the telecommunications and related industries; that "e-link" or "electronic link" describes an integral feature of applicant's email and paging goods and services, and the subject matter of its publications. In support of her position, the Examining Attorney submitted the following dictionary definitions:

Electronic mail - *noun, Computer Science.*

Messages sent and received electronically via telecommunication links, as between microcomputers or terminals. Also called *E-Mail*.⁶

Paging - *noun, Computer Science.* The transfer of pages of data between a computer's main memory and an auxiliary memory.⁷

e- (Electronic-) The "e-dash" prefix may be attached to anything that has moved from paper to its electronic alternative, such as e-mail, e-cash, etc.⁸

⁶ *The American Heritage Dictionary of the English Language*, 3rd ed., 1992.

⁷ *Ibid.* We take judicial notice of this definition submitted for the first time with the Examining Attorney's brief.

⁸ *The Computer Glossary*, 8th ed.

Link - (1) In communications, a line, channel or circuit over which data is transmitted.⁹

In addition, the Examining Attorney submitted excerpts of articles retrieved from the Lexis/Nexis database. There are five uses of the term "elink," however, each occurrence appears to be as a mark referring to applicant or a third-party. There is one use in a domestic publication of the term "electronic link," in the title of a reference, "Telecommunications: Hospitals explore new electronic links to reduce costs, increase access" [*Journal of Perinatal & Neonatal Nursing*, March 1, 1999].¹⁰

Applicant contends that ELINK merely "suggests to potential consumers that the products and services will somehow connect or bring people together and that electronic technology will facilitate this connection"; and that the Examining Attorney has not met her burden of proving that ELINK is merely descriptive in connection with the identified goods and services. In this regard, applicant argues that the proffered definition of "link"

⁹ *Ibid.*

¹⁰ There are approximately 12 uses of the term "electronic link" in connection with email and other goods and services related to the Internet and wireless communication. However, each reference is in either a foreign publication or a newswire service. As such, this evidence is of little probative value in determining the alleged descriptive connotation of the term to consumers in the United States.

is inapposite; that the Lexis/Nexis evidence is inadequate; and that the record contains no evidence of a public perception, or third party use, of ELINK in a merely descriptive manner.

Applicant submitted a definition of "link" as, *inter alia*, "a unit in a transportation or communications system" and "a connecting element; a tie or bond."¹¹ In support of its position that its mark is registrable, applicant also submitted a number of third-party registrations for marks that begin with "e," primarily in connection with software products; and for marks that end with "link," again, primarily in connection with software products, although three of the registrations pertain to telecommunications products.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that

¹¹ *The American Heritage College Dictionary*, 3rd ed., 1997.

a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. *In re Recovery*, 196 USPQ 830 (TTAB 1977).

We take judicial notice of the following dictionary definitions from telecommunications dictionaries:

Link - 1. The communications facilities between adjacent nodes of a network. 4. In communications, a general term used to indicate the existence of communications facilities between two points. 5. A conceptual circuit, i.e., logical circuit, between two users of a network, that enables the users to communicate, even when different physical paths are used. In all cases, the type of link, such as a data link, downlink, duplex link, fiber-optic link, line-of-sight link, point-to-point link, radio link, satellite link, should be identified. A link may be simplex, half-duplex, or duplex. *Telecom & Networking Glossary, Understanding Communications Technology* 137, Aegis Publishing Group, Ltd., 2nd ed., 2001.

Link - n. 1. In its broadest sense, a communications circuit or channel. 2. A specific leg in a circuit, as between two nodes, or two networks, or two users. ... 3. A communications

medium over which nodes can communicate at the link layer. *Data Telecommunications Dictionary* 447, CRC Press, 1999.

E Link - Extended Link. A Signaling System 7 (SS7) connection. This protocol controls all transfers between COs in North America. *Newton's Telecom Dictionary, The Official Dictionary of Telecommunications & the Internet* 272, 1999.

Link - A connection, logical or physical, that connects two communications entities and allows them to exchange information. The entities can be either hardware devices (such as a workstation or microwave dish) or software applications (such as an Internet Web browser or software accounting program). *McGraw-Hill Illustrated Telecom Dictionary* 355, McGraw-Hill, 2nd ed., 2000.

E Link (Extended Link) - An SS7 (Signaling System 7) signaling connection between a signaling-end point translator and a signal-transfer point. SS7 is the protocol that controls call transfers between central offices in North America. *Id.* at 219.

Link - 1. Another name for a communications channel or circuit. *Id.* at 459.

Link Attached - Describing devices that are connected to a network, a communications data link, or telecommunications circuit; compare with channel-attached. *Id.*

Link Protocol - The set of rules by which a logical data link is set up and by which data transfers across the link. It includes formatting of the data. *Id.* at 461.

Link Set - A group of signaling links directly connecting two signaling points. *Id.*

First, we note that a number of the telecommunications dictionaries include entries for the

term "e link" as an abbreviation for "extended link," which has a very specific technical meaning which may, or may not, be applicable to the goods and services described in this application. However, the Examining Attorney neither asked questions nor provided evidence in this regard. Therefore, we draw no conclusions with respect to this particular technical definition of "e link."

We do, however, accept the Examining Attorney's and applicant's acknowledgement that "e" is a prefix which is generally recognized as meaning "electronic" in connection with computers and the Internet. *In re Styleclick.com Inc.*, 57 USPQ2d 1445 (TTAB 2000). Additionally, there is no question that electronics, *i.e.*, computers and the Internet, play a large role in the telecommunications industry, particularly in connection with those goods and services in International Classes 9 and 38 in the applications herein. Therefore, the "e" portion of applicant's mark is merely descriptive in connection with those identified goods and services.

Looking at the "link" portion of the term ELINK herein, we agree that "link" has a commonly understood meaning in ordinary language as "a connecting element," as stated in the submitted dictionary definitions. We

also find strong support in the telecommunications dictionaries for the conclusion that this meaning of "link" in ordinary language has migrated into the electronics and telecommunications fields, where it retains the general connotation of "a connecting element," and also has an apparent multiplicity of specific meanings. As stated in the above-quoted *Data Telecommunications Dictionary*, "link" is "in its broadest sense, a communications circuit or channel."

Clearly, this general meaning of "link," both in ordinary language and as it is defined in the telecommunications dictionaries, merely describes the many "links" or "connecting elements" involved in applicant's pager and email devices and the services related thereto. To name a few obvious "links," we point to the link between the pager and e-mail components of applicant's device; to the link between the devices and the Internet or other local network; and to the link that the services provide between the devices, and between the devices and other electronics as used by consumers. The term "link" merely describes all of these various significant, if not essential, characteristics of applicant's goods in Class 9 and services in Class 38. The prefix "e," meaning "electronic," is equally

descriptive in relation thereto, because each of these links is electronic in nature.

Thus, considering the term ELINK in applicant's marks, we find that the combination of the two merely descriptive terms, "e," as a prefix, and "link," results in a term that, in its entirety, is merely descriptive in connection with applicant's goods in Class 9 and its services in Class 38, as described herein. Applicant has not presented persuasive evidence or argument that ELINK, considered in the context of these goods and services in the telecommunications field, is incongruous, a double entendre, or so ambiguous as to be only suggestive.

Further, we find ELINK to be merely descriptive of applicant's identified publications in Class 16, in applications Serial Nos. 75/693,991 and 75/693,982.¹² Because of the significance of the term ELINK in this field, it is merely descriptive of a significant aspect of the subject matter of applicant's publications.

Decision: The requirement in each application, under Section 6 of the Trademark Act, 15 U.S.C. 1056, for a disclaimer of ELINK (or E-LINK) apart from each mark as a whole, is affirmed.

¹² In connection with Application Serial No. 75/693,982, ELINK AGENT, applicant, in its brief, indicated its withdrawal of its offer to

Serial Nos. 75/688,691, 75/693,982, 75/693,991, 75/772,705

However, this decision will be set aside and the marks published for opposition if applicant, no later than thirty days from the mailing date hereof, submits an appropriate disclaimer of ELINK or E-LINK in the applications. See, Trademark Rule 2.142(g).

disclaim AGENT. However, the offer is not in the record and has not been entered, therefore applicant's withdrawal is unnecessary.